

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARTHUR POWELL,
Petitioner,

v.

DEPARTMENT OF HOMELAND SECURITY
District Director, and
BUREAU OF IMMIGRATION AND CUSTOMS
ENFORCEMENT,
Respondents,

Civil Action No.

05-10824-NMG

MOTION TO AMEND PETITION FOR A WRIT OF HABEAS CORPUS.

NOW comes the petitioner in the above captioned matter and hereby moves this Honorable Court to amend his petition in the interest of justice.

1) Petitioner moves to amend that portion of the petition entitled "FACTUAL BACKGROUND", paragraph three, sentence four, which states ' In addition, petitioner was also convicted of criminal possession of a controlled substance on December 19, 1998. Petitioner avers that he entered a plea of guilty to criminal possession of a controlled substance in the 4th degree on November 17, 1988. (See Exhibit # 28).

2) Petitioner moves to amend that portion of the petition entitled "LEGAL ANALYSIS", paragraph one to add to that paragraph that petitioner relies on his contention that he had obtained Lawful Permanent Resident Status on the basis of United States v. Brissett, 720 F.Supp. 90. In Brissett, the Court found that an alien applicant for adjustment of status to permanent resident is not without authorization to remain in the United States, and thus is not "illegally" or unlawfully in the country within the criminal statutes invoked in that case. The court further stated that United States immigration regulations permit an applicant for adjustment of status to permanent resident under 8 U.S.C. section 1255 to remain in the country pending disposition of the application.

3) Petitioner moves to amend that portion of the petition entitled "LIST OF EXHIBITS", to add to the list of exhibits:

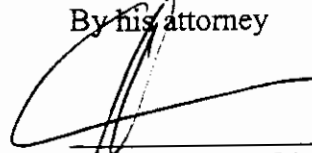
Exhibit # 27 Response from ICE for release from custody
Exhibit # 28..... Certificate of Disposition

Exhibit # 29.....Record of Deportable/Inadmissible Alien

WHEREFORE, petitioner prays that this Honorable Court grants his requests.

ARTHUR POWELL

By his attorney

A handwritten signature in black ink, appearing to be 'Peter J. Mitchell', written over a horizontal line.

PETER J. MITCHELL

B.B.O# 641852

P.O. Box 4438

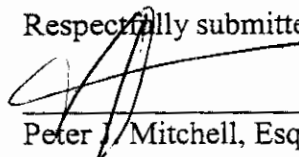
Springfield, MA 01101

(508) 755-4688

CERTIFICATE OF SERVICE

I, Peter J. Mitchell, Esq., counsel for the petitioner, Arthur K. Powell, do hereby state that a copy of the forgoing Motion to Amend Petition for a Writ of Habeas Corpus, Motion for a Change of Custody Hearing and Memorandum in Support thereof was served on counsel for the respondents, Department of Homeland Security, District Director and Bureau of Immigration and Customs Enforcement, Assistant United States Attorney Michael Sady, and a copy to the United States District Court, Massachusetts, by certified mail.

Respectfully submitted,


Peter J. Mitchell, Esq.

Date June 13, 2005

LOCAL RULE 7.1(A)(1) CERTIFICATION

The undersigned counsel certifies that he has contacted respondent's counsel concerning the instant motions.



**U.S. Immigration
and Customs
Enforcement**

May 23, 2005

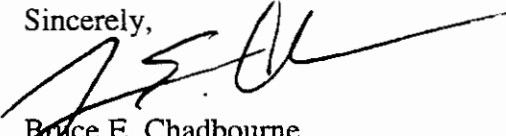
POWELL, Arthur K.
C/O Peter J. Mitchell
P.O. Box 4438
Springfield, MA 01101

A70 895 253

This is in response to your request to be released from I.C.E. custody, dated May 16, 2005.

This office is unable to consider your request as you are subject to the mandatory detention provisions of Section 236(c) of the Immigration & Nationality Act.

Sincerely,


Bruce E. Chadbourne
Field Office Director

l.m.

NASSAU COUNTY
COUNTY COURT HOUSE
262 OLD COUNTRY ROAD
MINEOLA, NY 11501

CERTIFICATE OF DISPOSITION - SUPERIOR COURT INFORMATION

DATE: 06/09/2005

CERTIFICATE OF DISPOSITION NUMBER: 2214

PEOPLE OF THE STATE OF NEW YORK
VS.

CASE NUMBER: SCI-69864-88
LOWER COURT NUMBER(S):
DATE OF ARREST: 09/16/1988
ARREST #: 262332
DATE OF BIRTH: 11/16/1958

POWELL, ARTHUR K

DEFENDANT


I HEREBY CERTIFY THAT IT APPEARS FROM AN EXAMINATION OF THE RECORDS ON FILE IN THIS OFFICE THAT ON 11/17/1988 BEFORE THE HONORABLE WEXNER, I THEN A JUDGE OF THIS COURT, THE ABOVE NAMED DEFENDANT ENTERED A PLEA OF GUILTY TO THE CRIME(S) OF

CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE 4th DEGREE PL 220.09 01 CF

THAT ON 12/19/1988 THE ABOVE NAMED DEFENDANT WAS SENTENCED BY THE HON. WEXNER, I, THEN A JUDGE OF THIS COURT TO

CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE 4th DEGREE PL 220.09 01 CF
IMPRISONMENT = 6 MONTH(S)
PROBATION = 5 YEAR(S)

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL ON THIS DATE 06/09/2005.


CLERK OF COURT

U.S. Department of Justice

Immigration and Naturalization Service

Record of Deportable/Inadmissible Alien

Family Name (CAPS) POWELL, Arthur		First POWELL	Middle ARTHUR	Sex M	Hair BRO	Eyes BRO	Cmplxn DRK
Country of Citizenship UNITED KINGDOM	Passport Number and Country of Issue Case No: MAN0306000004 A070 895 253	File Number MAN0306000004		Height 70	Weight 175	Occupation DISPATCH	
U.S. Address 148 - 03 225 STREET BASEMENT SPRINGFIELD GARDENS, NEW YORK 11413				Scars and Marks See Narrative			
Date, Place, Time, and Manner of Last Entry 12/22/1993, Unknown Time, At NYC, VISA WAIVER PROGRAM				Passenger Boarded at		F.B.I. Number 710795JA1 <input type="checkbox"/> Single <input type="checkbox"/> Divorced <input checked="" type="checkbox"/> Married <input type="checkbox"/> Widower <input type="checkbox"/> Separated	
Number, Street, City, Province (State) and Country of Permanent Residence				Method of Location/Apprehension L 511.2.2			
Date of Birth 11/16/1958	Age: 44	Date of Action 06/05/2003	Location Code BOS/MAN	At/Near Manchester, NH		Date/Hour 06/04/2003 0000	
City, Province (State) and Country of Birth BIRMINGHAM, N/A, UNITED KINGDOM	AR <input checked="" type="checkbox"/>	Form: (Type and No.)	Lifted <input type="checkbox"/>	Not Lifted <input type="checkbox"/>			
NIV Issuing Post and NIV Number	Social Security Account Name SAME AS ABOVE,			By JOHN K. GIBBONS			
Date Visa Issued	Social Security Number 066-88-2556			Status at Entry Visa Waiver Program		Status When Found SERVICES	
Immigration Record NEGATIVE - See Narrative				Criminal Record See narrative			
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate) Nationality: UNITED KINGDOM POWELL, Dinnon SAB				Number and Nationality of Minor Children 3 USC CHILDREN			
Father's Name, Nationality, and Address, if Known Nationality: JAMAICA POWELL, Arthur DECEASED				Mother's Present and Maiden Names, Nationality, and Address, if Known BURKETT, Joan Nationality: JAMAICA DECEASED			
Monies Due/Property in U.S. Not in Immediate Possession	Fingerprinted? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	INS Systems Checks See Narrative	Charge Code Word(s) See Narrative				
Name and Address of (Last)/(Current) U.S. Employer LAURTON CAB COMPANY	Type of Employment Operators, Fabricators, and Laborers	Salary/Weekly 200.00	Employed from/to 03/ /2003 / /				
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.) FIN #: 16753468 SCARS, MARKS AND TATTOOS None Indicated INS SYSTEMS CHECKS Central Index System Positive Interagency Border Inspection System Negative National Crime Information Center Positive Non Immigrant Information System Positive Treasury Enforcement Communications System Negative CHARGE CODE WORD(S) R1B R3D Narrative Title: Record of Deportable/Excludable Alien Narrative Created by GIBBONS ENTRY: Subject is a citizen and national of United Kingdom. Subject entered the United States at New York, New York on December 12, 1993 under the Visa Waiver Program with authorization to remain in the United States until March 11, 1994. Subject remained beyond March 14, 1994 without permission from BICE.							
Alien has been advised of communication privileges. _____ (Date/Initials)				 JOHN K. GIBBONS IMMIGRATION AGENT (Signature and Title of INS Official)			
Distribution: File Stats		Received: (Subject and Documents) (Report of Interview) Officer: JOHN GIBBONS on: March 25, 2005 10:00 at _____ (time) Disposition: Warrant of Arrest/Notice to Appear Examining Officer: MARK FURTADO					

Alien's Name POWELL, Arthur	File Number Case No: MAN0306000004 A070 895 253	Date 06/05/2003
---------------------------------------	---	---------------------------

APPRE: Subject was encountered during Operation Deception. Operation Deception is a multi - agency task force investigating foreign nationals applying for US Passports.

PROCS: Subject issued WA and Order of Removal and held in service custody.

INTEL: Subject was indicted May 22, 2003 of Passport Fraud and False Statements in US District Court in Concord, New Hampshire. On May 23, 2003 a Warrant of Arrest was issued for the above subject. Subject was arrested on May 28, 2003 by the US Department of State / Bureau of Diplomatic Security. Subject has been convicted in the Nassau County Court of Criminal Possession of a Controlled Substance on December 19, 1998 and was sentenced to 6 months. Subject was convicted on March 25, 2005 in United States District Court of False Statements (18USC1001) and was sentenced to 2 years probation. Subject is negative in IBIS. Subject has no other criminal record.

Signature  JOHN GIBBONS	Title IMMIGRATION AGENT
---	-----------------------------------